IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (LODGING) NO.640 OF 2006
IN
ARBITRATION PETITION NO.294 OF 2006

Chittaranjan D. Shah ....Appellant
V/s.
Official Assignee & Ors. ....Respondents

Mr.Ketan Parekh i/b Denzil D'Mello for the Appellant.
Mr.Pradeep Sancheti with Mr.Riyaz Chagla with Mr.H.K. Sudhakar i/b M/s.Khaitan & Co. for Respondent Nos.2 to 5.
Mr.A.P. Kothari, Deputy Official Assignee present.

CORAM : DR.S. RADHAKRISHNAN &
S.J. VAZIFDAR, JJ.
DATED : 8TH AUGUST, 2006.

P.C. :

1. Heard the learned counsel for the Appellant and the learned counsel for the Respondents.

2. By this Appeal, the Appellant is challenging the order dated 26.7.2006 passed by the learned Single Judge in a Petition under Section 14 of the Arbitration and Conciliation Act, 1996 (for short "the said Act") seeking termination of a mandate given to the learned Arbitrator. We have perused the impugned order.

3. It appears that the Respondents herein had filed a suit in this Court against the Appellant in

April, 1997 in this Court. Subsequently, this Court by an order dated 9.2.2000 referred the disputes in the above suit for arbitration with the consent of all the parties. Accordingly on 26.8.2002, the Respondents informed the Appellant regarding appointment of a learned Arbitrator. Before the learned Arbitrator on 19.10.2002, the first meeting was held wherein statement of claim was filed. On 18.12.2002, the Appellant herein had filed the statement of defence and counter-claim. It appears that thereafter on 5.11.2003, the affidavit of evidence of the first witness of the Claimant was filed before the learned Arbitrator.

4. Unfortunately the learned Arbitrator passed away in the year 2004 and the Respondents herein had collected the records and proceedings from the office of the learned Arbitrator and they suggested certain names as an Arbitrator to replace the deceased Arbitrator. Finally, on 27.6.2005, this Court by consent of all the parties, appointed a new Arbitrator. The new Arbitrator appears to have held six meetings with regard to certain interim applications filed by the Respondents herein as well as four meetings with regard to the applications filed by the Appellant herein.

5. In February, 2006 the Appellant herein had filed an application for amendment before the learned Arbitrator, which application came to be dismissed by the learned Arbitrator on 3.5.2006. Thereafter the Appellant seems to have taken out the above Petition under Section 14 of the said Act on 28.6.2006 for termination of the mandate of the learned Arbitrator. The learned Single Judge by the impugned order dated 26.7.2006 had declined to terminate the mandate of the learned Arbitrator finding no ground being made out. Aggrieved thereby, the present Appeal is filed.

6. The main contention of the learned counsel for the Appellant is that there has been delay of over six and half years in the arbitral proceedings. Whereas in reality the present Appellant had also consented for the appointment of the new Arbitrator before this Court on 27.6.2005. The new Arbitrator has been appointed on 27.6.2005 and has decided several interim applications as well as recorded some evidence and as such one cannot say that the new Arbitrator has failed to act without undue delay as contemplated under Section 14(1)(a) of the said Act. We are clearly of the view that the present Petition under Section 14 of the said Act has been filed because the learned Arbitrator by

his order dated 3.5.2006 had rejected the application for amendment filed by the Appellant herein. Hence we do not find any error or illegality in the impugned order of the learned Single Judge. The Appeal is devoid of any merits, hence the same is dismissed.

7. In view of the above, we are not considering the preliminary objection raised by the learned counsel for the Respondents that the above Appeal itself is not maintainable under Section 37 of the said Act.

(DR.S. RADHAKRISHNAN, J.)

(S.J. VAZIFDAR, J.)